

✓  
The State of South Carolina

February  
#1580



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-758-2072

April 11, 1985

Claude M. Scarborough, Jr., Chairman  
South Carolina Research Authority  
Post Office Box 12025  
Columbia, South Carolina 29211-2025

Dear Mr. Scarborough:

You have requested from this Office (1) opinions on specific questions relating to the South Carolina Research Authority ("SCRA" or "Authority"), and (2) guidelines with respect to the Authority's procurement practices and its compliance with the State Ethics Act. Responses to your questions, along with the requested guidelines, are set forth below.

I. INTRODUCTION

The Research Authority was created by Act No. 50 of 1983 to promote and enhance research facilities in the State and to promote high technology industry. The Authority's governing board consists in part of a number of business leaders in South Carolina. In order for the Authority to avail itself of the services of those businesses while complying with the State Ethics Act, the Authority may follow the Ethics Act Guidelines set forth herein under Part III.

Further, although the Authority is specifically exempted by its enabling act from the Consolidated Procurement Code, the Authority wishes to comply, so far as possible consistent with its needs, with the general principles set forth in the Code. The Authority may do so by following the Procurement Guidelines set forth herein under Part IV. The guidelines set forth in Part IV are, however, advisory only and may be waived when required by appropriate circumstances.

REQUEST LETTER

Before proceeding to discuss these Guidelines, however, we will respond to some specific questions you have addressed to this Office.

## II. RESPONSES TO QUESTIONS

You have requested an opinion as to whether it is advisable for the Authority to solicit bids from three or more law firms or other professionals (e.g., accounting firms) to provide professional services to the Authority, and whether it is advisable for the Authority to renew annually its selection of such professionals.

In answer to the first question, as a matter of law the Authority is exempted from the operation of the Consolidated Procurement Code by 11-35-710(1). Thus, even if that Code required bids for professional services, it would not apply to the Authority. Moreover, there is no other statute which would impose such a requirement on the Authority.

As to the second question, this Office is unable to find any provision which requires the annual examination and renewal of contracts for legal or auditing services by the Authority.

## III. ETHICS ACT GUIDELINES

The Research Authority, pursuant to Section 3 of Act No. 309 of 1984, is subject to the State Ethics Act (Sections 8-13-10, et seq., 1976 Code of Laws). The following consists of language similar to the provisions of the Ethics Act dealing with procurements in which public officials may be interested.

### A. General Rules (See § 8-13-410(1) and (2)).

1. No officer or employee of the Authority shall use his official position or office to obtain financial gain for himself.
2. No officer or employee of the Authority shall participate directly or indirectly in a procurement when he has knowledge or notice that:
  - (a) he or any business with which he is associated has a financial interest pertaining to the procurement;
  - (b) any other person, business, or organization with whom he or a member of his household is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

B. Actions to be taken where decision would affect the financial interest of an official or employee of the Authority. (See : 6-13-460).

1. When any officer or employee of the Authority, in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interests or those of a member of his household, or a business with which he is associated, he shall instead take the following actions:

(a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

(b) In the case of an employee of the Authority, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take such action as prescribed by the State Ethics Commission.

(c) In the case of a trustee of the Authority, he shall furnish a copy of the statement to the presiding officer and other trustees. The statement shall be printed in the Authority's minutes. The trustee with a potential conflict of interest shall be excused from votes, deliberations and other actions on the matter on which the potential conflict of interest exists, and shall cause such disqualifications and the reasons therefor to be noted in the minutes.

#### IV. PROCUREMENT GUIDELINES

A. All final procurement decisions shall be made by the Authority's Board of Trustees or a designated committee of the Board. All staff work regarding procurements shall be performed by employees of the Authority.

B. Sealed Bidding.

Contracts amounting to \$20,000 or more shall be governed by the following guidelines.

1. Invitation for bids.

An invitation for bids shall be issued in an efficient and economical manner to at least three

(or less, if fewer qualified sources are available) qualified sources appropriate to the particular procurement, and shall include specifications and all contractual terms and conditions applicable to the procurement.

2. Notice.

Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the consideration of bids.

3. Evaluation of bids.

Bids shall be evaluated, and the contract awarded, on the basis of the Authority's consideration of all appropriate circumstances, including but not limited to the lowest responsive and responsible bid. The Authority's Board or its designated committee shall possess sole discretion in determining which bid to accept.

4. Notification of award.

The Authority shall promptly inform all bidders of its source selection.

C. Sealed proposals (requests for proposals).

When the Authority's Board or its designated committee determines, in its sole discretion, that the use of sealed bidding is either not practicable or not advantageous, a contract may be entered into by sealed proposals, as set forth in the following provisions.

1. Request for proposals.

Proposals shall be solicited from at least three (or less, if fewer qualified sources are available) qualified sources, through a request for proposals.

2. Notice.

Adequate public notice of the request for proposals shall be given in the same manner as provided in Sections B(1) and B(2) above.

3. Evaluation factors.

So far as practicable, the request for proposals shall set forth the factors upon which proposals shall be evaluated.

4. Award.

Award shall be made to the responsive offeror whose proposal is determined to be the most advantageous, taking into consideration price and other evaluation factors.

5. Notification of award.

The Authority shall promptly notify all who submitted proposals of the award.

D. Negotiations after unsuccessful sealed bidding.

When it appears for any reason that all bids received pursuant to Section B are unsatisfactory to the Authority, the Authority's Board or its designated committee may negotiate with the bidder or bidders of its choice.

E. Small purchases.

Any procurement not exceeding \$20,000 may be made by the Authority's Board or its designated committee without regard to these Guidelines.

F. Sole source procurement; Procurement to facilitate Authority purposes to attract technology-based industry.

1. Notwithstanding any other provisions of these Guidelines, a contract may be awarded for any procurement of professional services, including but not limited to accounting, architectural, consulting, engineering and legal services, without bids or requests for proposals.
2. Notwithstanding any other provision of these Guidelines, a contract may be awarded for any procurement without bids or requests for proposals when the Authority's Board or its designated committee, in its sole discretion, determines that (a) there is only one source for the required procurement or (b) it would adversely affect the Authority's ability to accomplish one or more of its statutorily designated purposes so to do.

G. Cancellation.

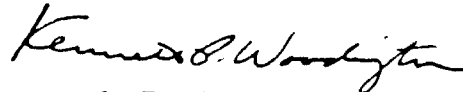
Any invitation for bids, a request for proposals, or any other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part when the Authority's Board or its designated Committee determines, in its sole discretion that such rejection is in the best interest of the Authority.

Claude M. Scarborough, Jr., Chairman  
April 11, 1985  
Page 6

H. Administrative review.

No procurement decision of the Authority's Board or its designated committee shall be subject to any form of administrative review after the final decision has been made.

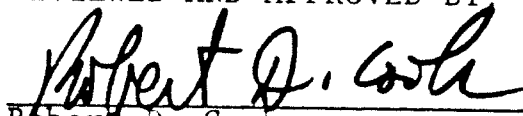
Sincerely yours,



Kenneth P. Woodington  
Senior Assistant Attorney General

KPW:rmr

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions